CONTRACTS—IMPOSSIBILITY—TEACHER'S CLAIM TO SALARY FOR TIME DURING WHICH SCHOOL WAS CLOSED BY HEALTH BOARD.—Plaintiff sued township trustees under a contract for employment as school teacher, to recover salary for twenty-seven days during which the school had been closed by the county board of health, acting under authority granted by statute. Defense of township trustees was based upon impossibility of performance as an excuse. *Held,* that the defense was good. *Gregg School Tp., Morgan Co.* v. *Hinshaw,* (Ind., 1921) 132 N. E. 586.

Cases similar to the principal case have not been infrequent in recent years. See 18 MICH. L. REV. 796. In the principal case, as in these cases generally, the decision is put upon the ground that performance was impossible, and therefore excused. The court states as the rule that "when performance becomes impossible, non-performance is excused, and no damages can be recovered." It is submitted, however, that performance by the trustees of the promise sued upon, viz., the promise to pay salary, was not impossible, (nor prevented by law); and furthermore, that impossibility does not necessarily excuse in every case. The real basis for the defendant's defense would seem to have been failure by plaintiff to perform the services which were the condition precedent to his right to recover the salary. *Amer. Mercantile Exch.* v. *Blunt,* 102 Me. 128. See WILLISTON ON CONTRACTS, secs. 838, 1972 and 1973. On this theory the plaintiff could recover only by showing that he was excused from performing this condition. The only valid excuse, in a case like the principal case, where the condition is at the same time the consideration for the defendant's promise, is that the promisor has waived, or prevented the performance of, or materially increased the difficulty of performing such condition precedent. *Melville* v. *DeWolf,* 4 E. & B. 844; *New York Life Ins. Co.* v. *Statham,* 93 U. S. 24. But see *Schoelkopf* v. *Moerbach Brewing Co.,* 184 N. Y. Supp. 267. The second criticism, which pertains to the court's statement of the rule in regard to impossibility, raises the much mooted question as to just how far impossibility excuses. That the rule as here given is too broad would seem to be evident from even a superficial examination of the authorities. *Columbus Ry., Power & Light Co.* v. *City of Columbus,* 249 U. S. 399; *Mascall* v. *Reitmeier,* 145 Minn. 214. To accept the language of the court as an exact statement of the rule would involve an unwarranted extension of the limits of impossibility as a defense. See 17 MICH. L. REV. 412 and 689; 18 MICH. L. REV. 589, and L. R. A. 1916 F 10. It is probable that the court did not intend the rule as given to be taken without qualifications and exceptions. If so, we can only say that such broad, unguarded statements are to be deprecated as misleading, especially where there is no indication in the language used that the court is speaking in general terms.

CRIMES—INDICTMENT—ALLEGATION OF IMPLIED ELEMENT IN STATUTORY CRIME.—A statute required the driver of an automobile striking a person to stop, render assistance, and give certain information on request, and it provided a penalty for failure to do so. The defendant was charged with doing acts as set out in the statute, the indictment failing to allege that he

knew he had struck anyone when he failed to stop. *Held,* though lack of knowledge on the part of the defendant would be a defense, the indictment was sufficient because the word "knowingly" did not appear in the statute in the description of the act denounced as the offense. *Scott* v. *State* (Tex. Cr. App., 1921) 233 S. W. 1097.

Where a statute states the elements of a crime it is generally correct to describe the crime in the words of the statute. *State* v. *Blackington,* 111 Me. 229. But "where the words of the statute by their generality may embrace acts which fall within the terms but not within the spirit or meaning of the statute the specific facts must be alleged to bring the defendant precisely within the inhibition of the law." *State* v. *Doran,* 99 Me. 329. "While as a general rule it is sufficient to charge a statutory offense in the words of the statute, the information must contain a statement of the acts constituting the offense and if the statutory words are not sufficient it must be expanded beyond them." *Wilcox* v. *State,* 13 Okla. Crim. 599. These rulings are but illustrations of the general rule that the indictment must charge a crime and so must state specifically all the facts and circumstances necessary to constitute the offense charged. *Brown* v. *Williams,* 31 Me. 403. The principal case squarely raises the question of whether or not the indictment need allege an element construed into the statute by the court in order to give effect to the legislative intent. When a statute specifically requires that an act be done knowingly, knowledge must be averred to charge the crime. *Bailey* v. *Commonwealth,* 78 Va. 19; *Powers* v. *State,* 87 Ind. 97. *James and Mollie Robeson* v. *State,* 50 Tenn. 266, *contra,* on the ground that knowledge is not an element of the offense but lack of knowledge is a matter of defense. If knowledge must be alleged when it is mentioned in the enactment there is no reason why it should not be alleged when the court reads it into the act. This application of the cardinal rule of criminal pleading, that the indictment must charge a crime, is sustained by numerous authorities which hold that the indictment must set forth specifically even elements of the offense that are implied by the statute as well as those that are specified. *Commonwealth* v. *Stout,* 7 B. Mon. (Ky.) 247; *United States* v. *Carll,* 105 U. S. 611; *Birney* v. *State,* 8 Ohio 230; *State* v. *Downer,* 8 Vt. 424; *Harrington* v. *State,* 54 Miss. 490; *Wilcox* v. *State, supra.* Among the cases *contra* are *Pierce* v. *State,* 10 Texas 556; and *Halsted* v. *State,* 41 N. J. Law 552.

CRIMINAL LAW—JURISDICTION—DEFENDANT ILLEGALLY BROUGHT INTO JURISDICTION.—Petitioner while serving a sentence in the United States penitentiary at Atlanta, Ga., was taken by the warden, on a telegram from the Attorney General and without the institution of proceedings for his removal under REV. ST. 1014 (COMP. ST. 1674), into the southern district of New York, and on his arrival there was brought into court on a writ of *habeas corpus ad prosequendem,* and was convicted for another offense. *Held,* that, while he was brought into the district of trial illegally, such fact did not affect the jurisdiction of the court to try him nor invalidate the judgment. *Ex parte Lamar,* 274 Fed. 160.